IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 885 OF 2006

Smt. Sulochana Sakharam Nibade ... Petitioner
V/s.
Union of India & Ors. ... Respondents

Mr. R.D. Suryawanshi for the petitioner.
Mr. G. Hariharan with Mr. D.A. Dubey for respondents.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 10th November, 2006

P.C.

. The petitioner has challenged the deduction of amount of Rs. 77,722/- by respondent No. 2, Head Post Master, Mumbai and respondent No. 3, A.S.P.M. (S.B. Counter), Mumbai from the petitioner's joint account No. 33410 under the Monthly Income Scheme (MIS). The petitioner's late husband Shri Sakharam Dhanaji Nibade along with the petitioner opened joint account under the MIS at Ghatkopar Post Office, on 24.11.1999. As per the scheme, the petitioner's husband along with petitioner deposited Rs.4,08,000/- (Rs.2,04,000/- each), jointly for a period of six years. The interest accrued on the said deposit was regularly credited to the Postal Savings Bank Account of the petitioner, every month, at the prescribed rate 12% i.e. Rs.4080/-.

2. The petitioner's husband expired on 30th

April, 2000. The concerned respondents allowed the name of petitioner's brother-in-law Shri Ganpat Dhanaji Nibade to be a joint account holder of the said scheme. The amount of Rs.4080/- per month was regularly credited to the joint bank account of the petitioner. The respondents never intimated or communicated to the petitioner about any clarification of change in the policy regarding the status of joint MIS, on the death of one of the depositors, it substituted by another, be treated as cancelled. The petitioner was never intimated that the addition of name of Shri Ganpat Dhanaji Nibade instead of deceased husband was treated as cancelled and the account became a single account.

3. After maturity of the said scheme in November, 2005, by a letter dated 25th January, 2006, for the first time, the respondents intimated regarding excess credit of the amount and adjustment thereof. The petitioner served a legal notice dated 05.02.2006 to the respondents. There was no reply from the respondents. The petitioner, therefore, has challenged the action of the respondents through this Writ Petition. The respondents by affidavit dated 17th July, 2006 resisted the claim of the petitioner.

4. Admittedly, there is nothing pointed out or even referred in the reply that the effect of death of one of the depositors in the joint monthly income scheme account was intimated to the petitioner till November, 2005. After the death of the petitioner's husband, as per then existing scheme, and as suggested by the respondents, the petitioner added a name of brother-in-law and the said account was continued as joint account as per original scheme. The respondents were also, from time to time, crediting the amount of Rs.4080/- regularly in the joint account. As per the affidavit in reply of the respondents, the aforesaid change has been brought on by the notification dated 28th January, 2004. The joint account as referred above was already amended prior to this date. There is nothing on record to suggest that the respondents at any point of time had intimated to the petitioner about the status of her account as the single account, after the death of her husband. In-fact, the respondents themselves, till November, 2005 treated the said account as joint account and credited the amount accordingly, as per the scheme. By notice dated 25th January, 2006, the respondents informed the petitioner, for the first time, about the said status.

The amount was admittedly, lying as a deposit with the respondents in the said account, even after 28th January, 2004. In the circumstances of the case, therefore, the action of the respondents of deducting the amount, by treating the said account as a single account, after the maturity of the account, in November, 2005, is incorrect. Having once represented and as both the parties have acted accordingly, such action of deducting the amount without prior or due notice, after November, 2005 i.e. after the maturity of the said scheme, is unjust and unfair. The Notification dated 28th January, 2004 is prospective and will apply to deposits on or after that date.

5. Taking all this into account, we are of the view that the petitioner is entitled to the refund of the amount of Rs.77,722/- which was wrongly deducted by the respondents. However, we are not inclined to pass any order for interest on the said amount as submitted by the counsel appearing for the petitioner. The respondents are directed to make the payment to the petitioner within a period of three months from the date of this order.

6. The petition is allowed in terms of prayer clause (a) with no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]